

New York Law School
CityLaw Breakfast
January 23, 2015

ROSS SANDLER: Welcome everybody, I'm Ross Sandler, Professor of Law and Director of the Center for New York City Law, and I want to welcome you to this very special occasion. There are still some seats available and there is coffee available on both sides of the room. Regretfully, there is overflow room but we are happy that so many people came. This is the first time we've had to do this and I apologize to those who might have expected to be in this room, but instead are in the overflow room. But we welcome you and we're delighted you're here. First, let me introduce dean and president of NYLS, Anthony Crowell.

CROWELL: Thanks so much everyone, how are you today? Great. I want to welcome you all to New York Law School or as we like to say New York's law school. I'm Anthony Crowell, Dean and president here and it's a real honor for us today to welcome U.S. Attorney for the Southern District, Preet Bharara for our City Law breakfast on the twentieth anniversary of the Center for New York City Law and this breakfast series and as the law school approaches its 125th anniversary. The US Attorneys leads an office that has a storied and distinguished history filled with the best legal minds and the most forceful legal advocates and US Attorney Bharara has gone above and beyond in this office and building its legacy. This is the most widely attended City Law breakfast ever and I think it's because what happens in New York matters everywhere. I know you are all eager to hear what the US Attorney has to say, especially today. And I'm sure you'll have many question. So now let me ask City Law's founder and Director Ross Sandler back and formally introduce the US Attorney.

SANDLER: Thank you Dean Crowell. This is a special occasion. We, uh, are really delighted that Preet Bharara agreed to speak and we thank him for honoring his commitment. This is a busy day, it's been a busy week and I do appreciate the fact that you honored the commitment and it speaks well of you and the office we all served in. PB was born in Punjab, India and grew up in Monmouth County, New Jersey. He was valedictorian of his high school, The Ranney School, magna cum laude at Harvard, Columbia Law graduate – law review, private practice, then an Assistant US Attorney handling organized crime cases. Then to Washington to work for Senator Schumer and committees, and then back in 2009 to head up the US Attorney's Office in the Southern District. In his position, he has maintained the excellence of the office in areas that are the most important: terrorism, financial fraud, white collar crime, organized crime, and he has been at the forefront of public corruption. Yesterday, his complaint, as newsworthy and as important and maybe milestone that it was – it's not the first. There have been three state senators, three assembly members, two council members – all who've been indicted and convicted in the Southern District under his leadership. The Southern District is a special place and what is important for those of us who followed it and have had the honor of being an

assistant is the integrity and independence of the office. To just call out two of the people in the room today – there's many I could mention – but two that were senior to me when I was an Assistant. Mike Armstrong went on to be the Counsel and Executive Director of the NAP Commission 1972 – a commission that reviewed police corruption and which is still relevant today. And Frank Turkheimer, went on to be a Watergate prosecutor and himself a U.S. Attorney in Wisconsin. There are many others here but that's the tradition of the office. What is important besides the day-to-day important work that goes on is that integrity and independence of the office that Preet Bharara has maintained and made even greater and is leaving a legacy of great responsibility for those that will follow in that great line of Assistant US Attorneys. I bring to the podium Preet Bharara.

PREET BHARARA: Thanks very much. It's an honor to be here. Such a large crowd; I understand there's an overflow room. I see some public officials and after yesterday I guess I have some theories to why that may be. One is that you knew that I would be taking attendance and the other is that there are a lot of folks now looking for immunity

(Laughs and applause from audience)

I want to thank New York Law School for organizing the event. In particular I want to thank Arthur Abbey, Chair of the Board of Trustees, Anthony Crowell, President and Dean, and Ross Sandler, Professor and Director of the Center for New York City Law and alum of the office. I want to acknowledge folks from my own office who I directed to come here. (looks around) I don't know if they actually came... Is there anyone from my office? I guess I'm all alone. So, I had not planned to speak about public corruption when I agreed to this event some months ago – I was going to talk about Bruce Springsteen most of the time – but given the timing of things I thought there is maybe a little bit of interest on public corruption so I thought maybe I'll talk broadly and vaguely about that.

So let me start with talking about our overall approach to corruption. Some of you may have heard me talk about these things before, I think, but there are new faces, so I think it's important for people to understand how I and my office think about mission against public corruption. So first let me explain what our mission is not about. We are not trying to criminalize ordinary politics. We are not trying to wag our fingers or thump our chests. Nor are we demanding that our politicians be virtuous or vice-free. We are prosecutors, not morality cops, so if you feel the urge to send inappropriate tweets, knock yourself out. We don't care about that, just try not to steal our money. We simply want people in high office to stop violating the law. It seems like a simple and modest request. The people elected to make laws should not be breaking them. But prosecuting public corruption for the most part is like prosecuting every other type of crime. Like any other area, we are fundamentally fearless – the people in my office – and we have a long tradition of fearlessness and appropriately aggressive. We go wherever the facts and law take us.

We just do our jobs. I like to quote one of my favorite movies, *The Departed*, and there's scene there where Mark Wahlberg is asked the question when someone comes in and is complaining about something and Mark Wahlberg says "What's going on" and the guy says "Who the eff are you?" and Mark Wahlberg says, "I'm the guy that does his job, you must be the other guy." And that's essentially how the career prosecutors in my office think of themselves. If people have concerns or questions or intimations to what motivates them and why they do what they do and how they pick their targets and how they do their research and how they prosecute their cases, the ethic of the place is: they're just doing their job.

So I thought I'd talk a little about the problem of public corruption – why it exists. A lot of people have talked about this for a long time, but here's my two cents. In a series of cases we have brought, including the one we brought yesterday, they, I think, go to the very core of what ails Albany and I said this yesterday: it's a lack of transparency, a lack of accountability, and a lack of principle, joined with an overabundance of greed, cronyism, and self-dealing. And it seems sometimes that Albany really is a... cauldron of corruption.

As I also said yesterday, politicians are supposed to be on the people's payroll; not on secret retainer to wealthy special interests they do favors for. Now one of the most commonly asked questions on public corruption is: why? Why do we have this problem however extensive one thinks it is? Why do officials who are supposed to hold the public trust and who are supposed to know better keep breaking the law even knowing what the consequences will be? And why is it so bad in New York. Now as I always say, I am not a behavioral psychologist or a political pundit or a social scientist so I don't really know the answer. The answer may not be knowable and probably there isn't one single answer even if it was knowable. I suppose it some combination of hubris and greed and ambition on the part of corrupt and corruptible officials. I suppose also there are temptations in the system, weakness in oversight, and gaping holes in transparency.

But I want to make a couple of observations about some of those causes. Often corruption is about greed, simple as that – Greed on the part of elected or appointed officials whose responsibility is to the public and whose salaries are paid by the taxpayer. Whether it's by selling votes for cash or embezzling funds in their trust or otherwise, there are a spate of instances where elected officials have sought to monetize their public positions. Money often seems to be the core of the problem. I was asked yesterday why the case we brought yesterday was different than some of our other cases. In some ways it is, in light of the standing and stature of the person who was charged but in many ways its business as usual in the public corruption unit. Case after case after we have brought has had at its base, money, and specifically a person who was in the public trust and sought ways to monetize his or her position. Consider some case from the last few years where convictions have already been obtained. New York City Councilman Dan Halloran, which you may remember, and he was caught on tape – he's been convicted and is now awaiting

sentencing – after allegedly receiving a \$7500 cash bribe, he says to the cooperating witness on tape and I quote “Money is what greases the wheels – good, bad, or indifferent.” In that same meeting he says, “That’s politics. It’s all about how much and that’s politicians in New York – they’re all like that. All like that. And they get like that because of the drive that money does for everything else. You can’t do anything without the effing money.” Close Quote. He didn’t say effing, he said the other word. (laughs)

You may recall another case that we brought against New York State Assemblyman Eric Stevenson who was convicted also and is currently serving a 3-year sentence. Eric Stevenson as we proved, accepted over \$22,000 in bribes from businesses in exchange for helping them open and operate adult daycare centers in the Bronx. Not only that, the businessman gratefully named their center after Assemblyman Stevenson’s grandfather – which was very sweet. (Laughs) Stevenson allegedly not only helped the businessman obtain necessary permits and recruit clientele, but also in exchange for cash bribes introduced actual legislation barring the opening of competing daycare centers in the city. In other words, Stevenson tried to enact a statutory moratorium to give his co-defendants a local monopoly. That was about money too; that was about monetizing the position too. And as I said at the time, among other things, it is a fairly neat trick to hatch a scheme that offends both the core principles of democracy and capitalism simultaneously. (Laughs) Here’s Eric Stevenson in his own words, as recorded in the case: “Bottom line, if half the people up here in Albany were ever caught for what they do. They would probably all be in jail so who are they BS-ing?” That’s Stevenson talking about his former colleagues, showing that he was maybe right about at least one thing.

So how should all of this make us feel as citizens and as taxpayers? As I said before, I think the people of New York should be disappointed but I think they should also be more than disappointed. They should maybe be angry. When so many of their leaders can be bought for a few thousand dollars, they should, maybe, think about being angry. When it is more likely for a New York State Senator to be arrested by the authorities than defeated at the polls, maybe they should think about getting angry. And they should ask some pointed questions. Given the allegations in case after case after case, how many other pending bills were born of bribery, and worse: how many past bills were born of bribery or improper influence. How about items in the budget? How much of the work of the city and the state government is tarnished by tawdry graft. While I continue to believe that public corruption in New York is more than a prosecutor’s job, you should rest assured that the people in my office are extremely busy and continue to do what prosecutor’s do. And that means being as aggressive and proactive on public corruption as we are on gangs and drugs and organized crime and insider trading and everything else. Because whenever corruption is on the rise, that means democracy is on the decline. And that means that law enforcement will use every aggressive tool at our disposal: wiretaps and confidential informants and agents and stings. We don’t care, and I think people get this by now, if you’re a city official or a state official, if you’re a Democrat or a Republican, if you’re a backbencher or a

gavel-wielding leader in your body. If you have broken the law, we will do everything we can to hold you accountable.

Let me make another observation about what part of the problem may be in Albany specifically. And here, allow me the indulgence of speaking as a citizen a little more than as a prosecutor, which I think from time to time, I'm entitled to do. It's the concentration of power. Power in New York State, as far as we can tell, is unduly concentrated in the hands of just a few men. Some say... just three men. There are by my count, 213 men and women in the state legislature and yet it is common knowledge that only three men, wield all the power: the Governor, the assembly speaker, and the Senate president.

So I must confess a little confusion about this... when did this come to pass? Why has everyone just come to accept it? So I have a little bit of a hard time getting my head around this concept of 'Three Men in a Room.' Maybe it's just me; I'm an immigrant from India which is overpopulated so, so for me, it's like a billion men in a room. So it could be that I'm just a little bit dense about it, but I would think that it wouldn't just be me, that lots of people would have questions about Three Men in a Room. Like why does it have to be three men? Can there be a woman? Do they always have to be white? How small is the room that they can only fit three men? Is it three men in a closet? Are there cigars? Can they have Cuban cigars now? After a while, doesn't it get a little gamey? The concept of Three Men in a Room seems to have disappointingly taken root as opposed to being questioned. It's almost become a part of the furniture; the political furniture. And it's weird to me, a little bit, that officials and writers joke about it, good-naturedly, as if they're talking nostalgically about an old sitcom coming up after "Happy Days": it's "Three Men in a Room." (laughs) Or like it's a hijinks comic movie involving a baby with Ted Danson, Tom Selleck, and Steve Guttenberg changing diapers. Or maybe, I don't know, The Three Amigos.

So Three Men in a Room... is that really how government should actually be run? Is that really the way to run a state of almost twenty million people? When did twenty million New Yorkers agree to be ruled like a triumvirate in Roman times? In fact, important decisions in my office are made by more than three men in a room. In fact, the decision to federally charge the Speaker of the Assembly yesterday was made by more than three people in a room. And, you know, on a serious note, the concept and dynamic of three men in a room has consequences. Common sense will tell you that. If you know you won't have power unless you're one of the lucky three, why would you bother and join the legislature in the first place? Good people don't waste their time that way. If you want to make a difference or if you want to make a change, you might not bother if you know you can't be one of the three. It seems to me that if you're one of the three men in the room and you have all the power and you always have, and everyone knows that, you don't tolerate dissent because you don't have to. You don't allow debate because you don't have to. You don't favor change or foster reform because you don't have to and because the status quo

always benefits you. And on the other side of the coin, if you're one of the three men in the room, you keep people in the dark... because you can. You punish independent thinking... because you can. You demand lockstep loyalty... because you can. You get swept up in the power and the trappings because you were never challenged and because you can easily forget who put you there in the first place.

So I ask you again: what kind of system is that that everyone seems to accept and good-naturedly joke about. Is that really the best way? I venture to guess not a single person in this room or in the overflow room or perhaps anyone else save for three people disagree with me. Now I'm not making any policy pronouncement at all, I'm just saying.

So there are lots of causes. We have the issue of money. We have an issue of the dynamic – the concentration of power. At the end of the day, and I think this is true not just in politics but in other institutions also, it seems there is a problem of culture. It seems a culture of corruption has developed and grown as I said some time ago like barnacles on a boat bottom. And it seems that such a culture has become so embedded that even a series of tough and successful prosecutions that have separated so many lawmakers from their liberty has not been enough to thwart others from following in their felonious footsteps. And just as with barnacles on a boat bottom, when growth is allowed to spread and grow unchecked, it unsurprisingly takes a collective, unrelenting effort to clean it up.

Here's a culture problem that I talk about a lot when I speak, as I often do, to business groups and to students at business school, when I'm talking to hedge fund industry groups and heads of banks, and people who are involved in compliance in law enforcement and it's a worry that I have that in a lot of places and a lot of quarters, people learn to be focused on where the line is – the technical line and they think about how close they can get to the line without going over. It's what I call, aspiring to the minimum. And when I speak at business schools and to business groups, I decry it, as you imagine because it's not a good way to foster a good culture, it's not a good way to prevent bad things from happening, it's not a good way to prevent subpoena-wielding prosecutors like those in my office from coming and knocking on your door. I say to the businesspeople I speak to, I think people in America – and I understand, the bottom line, the profit motive – but I think people should expect financial institutions that can effect economies and employ tens or hundreds of thousands of people, that they can aspire to something more than the minimum.

And the more we do in public corruption, the more I think the same principles apply there as well. If everyone around you is asking how close to the line can I get? What is the ethical violation precisely? How can I make sure that I'm just to the left of what the outside pay rules are? How can I make sure that I'm just to the left of what the disclosure obligations are? Or just to the left of what the campaign finance rules are? I mean that's great, knock yourself out, but

it's going to get you into trouble and it sends a message to everyone else that it's okay to do. And not everyone is going to stay on the right side of that line. Particularly when that message is coming from the top. I typically analogize to somebody who is trying to be very clever and avoid a drunk driving conviction. I suppose if you're really smart and there's a few people who are really smart and you go to the bar and you're having drinks and you know your body weight and you know how many drinks you're having and you know the pace at which you're having your drinks and you know how much food you've had, you can figure out with some precision how to stay just on the correct line of the DUI limit. And I suppose you can do that a couple times. But imagine how quickly it will be before a person like that gets pulled over on the highway. Imagine how quickly a person like that is going to blow the legal drinking limit. And imagine how quickly someone like that is going to kill someone on the highway and yet that seems to be the same principle of conduct and attitude and approach of not just malefactors on Wall Street but those in city and state government as well – not everyone, but too many people. When you have enough people who are promoting that culture, that's a problem. We had an example some years ago of the former senate president instructing people – and I think people remember this – to hand-deliver their disclosure forms so as to avoid a mail fraud count. (Laughs) I didn't even make that up.

So why should we care about this? A lot of people can't name their state legislator. A lot of people can't name at least two of the three men in the room. And they think politicians don't really matter to their daily lives. The opposite really is true. State legislators, believe it or not, are important. Each senator represents more than 300,000 people, each assemblyman, almost 130,000. Senators confirm appointment of state officials and court judges. State lawmakers determine our budget. They determine how much money goes to children's education, public safety, for health, transportation, public welfare. They decide what constitutes a crime and how it should be punished. They decide what we pay in rent and housing and in taxes, and as we revealed yesterday, there are issues that go to the core of the case that there are laws up for renewal that are in the body of the case.

Separate apart from all the things legislators are supposed to do for ordinary citizens, think of the things they could do. For a long time, it's been said that the real work of innovation and entrepreneurship and change takes place not at federal level but in state governments, and lots of states like to boast about that. State governments are supposed to be engines for innovation; they're supposed to be incubators for new ideas. When people are consumed by these other things and they don't care and their voters don't care to make them care, then that goes down the drain also.

Another reason we should care is that when you have these kinds of examples of conduct and misconduct over time, I think it undermines our faith in our own system and in democracy. When a New York State Senator is more likely to be arrested by the authorities, and then

defeated in the election, as I said, then people lose faith. When voters' campaign contributions can frequently foot the bill for a fancy lawyer when that legislator is later charged with corruption, people lose faith. When state senators are advised, as I said, by the majority leader's counsel in writing, to hand-deliver financial disclosures to avoid federal mail fraud charges, people lose faith. When politician after politician after politician, elected by the voters falls to criminal charges, people lose faith. At the end of the day, if yesterday's charges are proven to be true – and there's a presumption of innocence, of course – that at least one of the proverbial three men in the room is deeply compromised, how could we trust that anything that gets decided in Albany and imposed upon us is on the level. How can we trust that anything is on the level?

So, at the end of the day, the jobs of prosecutors are to hold people accountable, to make sure they are following the law, to ensure they are enforcing the law without fear or favor. But the hope is, at least my hope is, that the product of bringing powerful and strong and righteous and appropriate cases, is that there will be reform. That almost happened with the Moreland Commission. But it turned out to be a little bit fleeting. People sometimes say does it matters if you change the law – and again, I'm not an expert on these things – but I'll give you one example that occurred to me when I was asked a question after we announced the charges yesterday. And again, I'm not talking about anything outside the four corners of the complaint and nothing beyond what I said yesterday. Someone asked the question yesterday, does it matter? Part of the allegations in the case are that the Speaker of the Assembly was secretly giving \$250,000 grants on two different occasions to a doctor who was causing patients to be referred to his law firm, thus causing a stream of payments to be put into the assemblyman's pockets. He was doing this, we allege in the complaint, in a way that had no transparency and no one knew. He had a pot of money under HCRA of 8.5 million dollars with which he could do whatever he wanted. If he wanted to return a favor, if he wanted to dispense it appropriately for a good cause, or as we allege, as a quid pro quo for a stream of payments coming back to him. And part of the evidence in the case is that line in complaint very clearly said in 2007 when there was an unusual bout of reform and the budget reform act was passed, the ability to dole out money from that \$8.5 million fund secretly and without transparency was ended. And you know what else ended at the time? The stream of payments, as we allege corruptly, to the doctor's research center. Now there was nothing preventing, as we say in the complaint, the Speaker of the Assembly, if it was a good cause – who was one of the three men in the room and who has access to all the perstrings you could possibly imagine, and who said at the time that this was a good cause because it was for mesothelioma research which affected a lot of people that were made ill after 9/11. But that didn't happen why? Because as we allege, there was something corrupt about those grants. So that's a small example of a case in which a certain kind of fraud stopped happening because a light was shone on a problem. So reforms can work; they have to be sensible and they have to be prudent.

I'll conclude with a point that seems obvious and that I've made before. And it's that prosecutors can't do all the work. Although we're really, really busy, and hopefully we make an impact, it's up to voters and it's up to people to get angry, as I said. People need to demand more. It's not just enough to be fed up. When New York politician after politician after politician breaks bad, that's a time to say no more half-measures. And I think that given the interest and the attention to some of the cases we brought and continue to bring, this can finally be perhaps a turning point for reform. After all, as Edward Murrow observed, "a nation of sheep will beget a government of wolves. If ever there was a moment for real reform, I think it's now and the public has to demand more. Individual voters acting and speaking collectively. New York tends to have the best of everything and it deserves better in this area also. New York is home to the safest large city in America. It should not harbor one of the most corrupt governments in the nation. New York is home to best problem solvers everywhere and no state has people that are more thoughtful, more industrious, more resilient, more demanding, and more impatient than New York. And for New Yorkers to show their trademark impatience with the status quo and to show loudly, I submit now is the good time. Thanks for hearing me.

SANDLER: By that ovation, you can sense how appreciative the audience is. I want to make a few announcements. First that these breakfasts are sponsored by our loyal founding sponsors: Consolidated Edison, we thank you for being here. Francis Richefsky, our Senior Vice President, Greenberg Traurig, and the Risener – our founding sponsors. Then we have special sponsors for this breakfast: Guidepost Solutions, we thank Bart Schwartz for that. Kostelanetz and Fink, we thank Claude Millman. We also like to thank our Gold Star Sponsors. If you volunteered to pay a slight fee for the breakfast, you get a Gold Star on your name tag. We are especially appreciative of the Gold Star attendees. This is the 118th City Law Breakfast. We've been doing this for 20 years. Our 119th breakfast will be in February. We will have Mira Josee, Chair of the City Taxi and Limousine Commission. There are important issues there. We will now open it up to questions. We have microphones and be sure to be short in your comment or question. I ask first the specialist officer, Bart Schwartz, if you'd like to make a comment and Claude Millman, but again I expect there will be many comments and questions and I ask they be relatively short.

BHARARA: I ask also that they be relatively easy.

ATTENDEE: I read the complaint yesterday but I won't ask those questions. One comment and then a question. Your point about people doing just enough to stay below the line or not go over the line of misconduct is a very good one and its frankly I think it's a failure of people to recognize the difference between compliance and ethics and if people focused more on ethics and what's right or wrong, you would have fewer problems and fewer people who would think about where the line. My question is this: There's been a lot of discussion recently about indicting individuals in the Complex Financial cases. I know General Holder spoke about it at NYU a few weeks ago and I just like to get your thoughts. In ancient times, when Ross and I

were Assistant U.S. Attorneys, the cases were not complex. When corporations were indicted, we almost always included individuals or certainly tried to and I know that doesn't happen as often. I wanted to know what your opinion on this was.

BHARARA: First, if could on your first point and echo what you said about the difference between following the rules and ethics. I will concede, as I do when I talk to business groups, that regulations are not perfect and rules are not perfect. I'm the United States Attorney and I'm subject to rules and a lot of them very frankly are stupid. Don't tell Washington. And that can be so if compliance officials at an industry are only teaching people how to follow the rules as promulgated, you're not teaching them much of anything. You're not teaching them how to think for themselves and how to conduct themselves and behave properly.

A: Because the rules might not be perfect and they usually are geared towards the lowest common denominator but also because its violation of how we should be teaching about doing the right thing. The analogy I tend to use is: it's like you only have teachers that are teaching to the test. The purpose of school is to educate people and make them wise and teach them how to learn for themselves. Now you should also do well on the test and you should pay attention to the test and you should do your reading and do your homework and pay attention to your teacher so you can predict what will be on the test, but if all our schools was did was teach people how to take tests, we would have bunch of crappy people and America would go down the drain. It's not that different when you're talking about corporations. If all you're doing is analyzing what regulation the SEC put out or the FTC put out or whatever alphabet combination you want, then you're not teaching them to behave properly and I couldn't agree with you more.

In response to the individuals vs. corporations, the bread and butter of the US Attorneys Office is and always has been and always will be, on the criminal side, the prosecution of individuals – when you can prove guilty without a reasonable doubt. But we have other tools in our toolbox as well. Sometimes it's a case where we prosecute individuals, sometimes it's a case where we prosecute individuals AND corporations, as was the case with SAC Capital and as we've done with any number of corporations because the law permits us in our discretion and if certain guidelines are met and certain thresholds are met to charge the entire institution because its pervasive and there's an entire history of misconduct and there's been recidivism and youre trying to make a specific and general deterrence point. Sometimes it's the case that you can charge individuals even if you'd like to because the statute of limitations has been run. Or sometimes that's so because there's been obstruction. Or you can't charge individuals because some of the evidence cannot be obtained and it sits overseas and a prime example of that is, and it's a very important case, we brought a case against Toyota Motor Corporation because they were bluntly and frankly talking a lot of BS about their safety issues with floor mats which caused a lot of problems for a lot people. The regulators could only get a maximum of \$57 or 58 million notwithstanding all the misconduct that had taken place. We in our office spent four years looking closely at everything that we possibly could and for various reasons, we talked at

the time we announced the case and their agreement to engage in Deferred Prosecution Agreement which is the filing of criminal charges held in advance. The payment of a billion two, reforms, an outside monitor, and everything else. I think that was a good result. A lot of the recalls you're seeing and a lot of the care that auto manufacturers are taking in whether or not they take bad cars off the road or whether or not they tell the Department of Transportation about some internal problem instead of sweeping it under the rug. They are more likely now, because of that case, with respect to a corporation, unfortunately not also individuals, but they're doing that because of that case. Where it is appropriate, we do individuals. Where it is appropriate, we do both. Where it is appropriate or impossible, we sometimes just have an action against the institution.

AUDIENCE MEMBER: My name is George Bulow. I'm an entrepreneur. I live in Manhattan; therefore, I'm in the Southern District. My question is a state question.

BHARARA: Even if you were elsewhere, you'd still probably be in the Southern District.
(laughs)

AUDIENCE MEMBER: Westchester, just not Brooklyn or Long Island. With regards to the Moreland Commission, there was a statement yesterday by a high political official on dismissing the Moreland Commission in this particular incident. Part of the reason was the subpoena power of federal prosecutors and other prosecutors was greater and therefore could do what he felt should be done and I'm wondering if you may comment on that question – a technical question admittedly: What the powers of the Moreland Commission or any other commission that is ever put together in this state are as compared to those of prosecutors, specifically federal prosecutors.

BHARARA: I'm not sure who you're talking about. You know, I'm very confused about the Moreland Commission as I think a lot of people are and various people have, I think, over time put this delicately, have given maybe eighteen or nineteen different explanations depending on the time on what its power was, what its level of independence was or should be as a practical matter or a legal matter, so I'm done sort of analyzing that. Going back to The Departed: we're the guys that do our jobs. I tend to think, not just for parochial reasons – local pride reasons – that the best ability to do a public corruption prosecution, in particular, and a lot of cases, in general, is a US Attorney's Office and particularly the Southern District of New York. We have a well-deserved reputation for independence. The nickname for our office, some people think its pejorative, I tend to think it's not, is the Sovereign District of New York, not the Southern District of New York. We have a tradition and the alumni of the office believe in the same tradition – I know former Commissioner Rose Gill Hearn of the Department of Investigation was one of the principle partners with whom we did a lot of these cases, we would not have been able to do a lot of these cases without her, she understands it. We understand it in our office. You really can't have faith and confidence and trust that people are doing corruption cases, in

particular, in the right way unless you believe in their absolute independence. Every time you prosecute somebody, there was a constituency of people that suggest ill-motive. Some people say, you know, you're going after African-Americans. Another time people said, you're going after Chinese-Americans. Another time something very convoluted: we prosecuted an Indian-American; obviously, Preet hates Indian Americans. I mean, really? Okay.... (laughs). Sometimes they say you must be going after Democrats or Republicans, because you used to work for a Democrat. Sometimes you go after a Democrat and they say why did you do it a month before the election and it seems to me over time, if you over and over and over take the tough and right position, no matter who the person is, people understand that you're independent. We don't have to be elected. We don't have to curry-favor with anyone and I think there are very good prosecutors that are elected but the structure of the situation for us tends to be, I think, favorable to bring tough and hard prosecutions. I mean, the woman who hired me as you know, one of the most independent people in this position ever, Mary Jo White, knew what her job was. There was this issue of the Marc Rich pardon, she commissioned an investigation that implicated the president who appointed her. That's what we do. It's a little bit surprising sometimes, it's great to get the applause the people give my office sometimes about doing hard cases but that's just what we do. That's what we've always done and that's what we always will do.

SANDLER: Bring Claude Millman forward, one of the sponsors from Koselantz and Fink

MILLMAN: I wanted to ask you what the experience of prosecuting high profile public corruption cases effects your relationships with offices where you get your referrals within the city or the state. For example, you mentioned the Department of Investigation; the City Controller's Office also has an investigative arm. How did those relationships survive that experience of bringing high-profile corruption cases?

BHARARA: I've not had any problems with that. My greatest experience has been with Rose and it was wonderful. People in those positions tend to understand that you're actually serving your administration best if you're getting rid of the bad guys and that's true whether you're talking about the public corruption or if you're talking about Wall Street. A lot of people suggest that everyone on Wall Street must hate you and all the hedge funds must hate you. The greatest congratulations that I have gotten have been from people that said we're glad you're doing it because you're not just leveling the playing field for the average investor, you're leveling the playing field for the non-average investor because you're getting rid of the people who for year after year after year have been causing capital to come into their hedge fund to use that example again, because they're cheating, and they're using an unlawful edge. So my experience has been that right-minded people think that the partnership is terrific.

BART SCHWARTZ: Steve Cohen, former intern in your office. (Laughs) Go back to your metaphor, if you would, of barnacles on the hull of the ship. How extensive is...

BHARARA: A lot of barnacles. A lot of barnacles.

SCHWARTZ: Compare, if you would, or to mix metaphors, the tip of the iceberg, compared to the financial industry. Albany vs. financial industry. Where are we seeing more extensive problems from your perspective?

BHARARA: Look, I don't know. People always ask and it's like how much sugar do you put in the recipe? I just don't know. And let me repeat that there are lots and lots and lots of good people in every institution. I want to repeat something I say when I speak to business schools because it sometimes seems like Preet's just a pain in the neck and he's always scolding and wagging his finger. And I think people are actually good and most people want to do the right thing and when I say in this roundabout way of answering your question by not answering it at all. I say to groups of students, you know, the reason I'm here and I'm actually speaking at Harvard Business School to the entire first-year class and I've been doing it for four years running to talk about how to stay out of trouble and I say the reason I'm here is not because it's a sort-of "Scared Straight" program for white-collar people, although it's a little bit that. And it's not only to direct my words to the two or three of you who statistically speaking are likely to commit serious securities fraud, although I know who you are and will be following you out of the classroom. But it's really to direct my words to the ears of the vast majority of people in this room and in most places who are good and right and are honorable and honest and have integrity and want to do the right thing. The problem is not so much the bad guys – although the bad guys are a problem. The biggest problem is the good guys that don't do anything about it. Whether you're talking about a hedge fund or you're talking about a legislature or you're talking about Penn State, the biggest, I think, institutional problem you have, not just in America and not just in New York, but in any culture, society, institution, is figuring out a way to make sure that good people who began with good intentions, don't just sit on the sidelines when something bad is going on. When fraud is taking place, or bribes are taking place, or young boys are getting raped, people have to stand up and do things. And the sad experience of doing this job for a long time is, in some ways, seeing the bad people do the bad things, but what is more disheartening and troubling is that in most of the big cases you read about in our office, lots and lots of people knew that bad things were happening before the FBI showed up. That was true in the Galleon Case. That was true in SAC Capital. That was true in Toyota. That was true in so many cases. If we figure out a way to less talk about the bad people – there will always be the bad people and there will always gonna be the evil people and the people that think they can get over and not be on the level – but if you somehow figure out a way to give courage to the people that know better and knew better and were taught better and want to do the right thing, then I think we'll solve a lot of the problem. But I can't compare Albany and Wall Street.

AUDIENCE MEMBER: My name is Scott Kaplan. Thank you for your service. My question is: where are local prosecutors? Should we be angry that District Attorneys, elected District Attorneys and elected Attorney General, rarely bring public bring these cases. It always seems to be the Feds that hold our elected officials accountable.

BHARARA: No, I don't think you should be angry. I can only speak about the work we do. I don't know what kinds of leads other offices get. I don't know what other priorities other offices have. The Manhattan District Attorney and I get along very well and I think he's a fantastic prosecutor and the State Attorney General has done significant public corruption prosecutions, as well as financial prosecutions. So I can't really speak to that and sometimes we work on things and investigate things together. So, I have no complaints.

AUDIENCE MEMBER: Hello, Mr. Bharara. I have a question. A lot of people were inspired by your office dedicating a team of prosecutors to look at Riker's Island and to make recommendations for reform. Given the larger debate, building on Scott's question, about the city looking at problems with police brutality and police officer involved killings, couldn't your office also dedicate a team of prosecutors to examine the NYPD and make recommendations?

BHARARA: Thank you for complimenting the work of the office with respect to Riker's Island. I think people don't always appreciate that we do all sorts of cases and that our obligation is to uphold the law and enforce the law, not just against people who are rank-and-file citizens, but also against the law enforcers themselves. We have a very proud record of doing that. As I have said on other occasions, we hate to do it and it breaks your heart, but since I've been US Attorney, twenty police officers have gone to prison for various crimes. We have sent FBI agents to prison for committing crimes. So those are forms of public corruption which is a part of what we're talking about today, so there's nothing more important than that. With respect to the New York City Police Department, my sense is that there are a lot of people looking at that. There is now an Inspector General. There are court decrees. There is a continuing court case. There have been times when the Southern District of New York, with the US Attorney's Office in the Eastern District of New York some years ago, thought it made sense to take a deeper look because of things that were going on and if that ever happens, we don't hesitate to do so. I had a great relationship with Ray Kelley. I have a great relationship with Commissioner Bratton. I think they're both unbelievably strong and good and thoughtful and caring public servants. That doesn't mean that there's not sometimes bad things that go on there. Commissioner Kelley acknowledged that, when he had to, and Commissioner Bratton acknowledged that. And if there ever comes a time, as I said before, we're not scared of anybody, and we look at our partners as partners, but when they cross the line, we take appropriate action there also. But I thank you for your comment.

AUDIENCE MEMBER: Good morning. Richard Barr. It has been said your office has a tremendously impressive record in going after public corruption. But I wanted to ask about one

particular case, as I understand that it's probably just before you took over the office. Nelson Castro was elected to the state legislature. He represented a district in the West Bronx and your office, either right before or right after the election, became aware of some conduct of his that caused him to wear a wire, in return, presumably, for more lenient treatment and that this arrangement continued for the next two election cycles, I believe.

BHARARA: That was under my tenure. And it was one election cycle.

AUDIENCE MEMBER: Where he was reelected. Obviously, this is before this became public knowledge and obviously, he gave useful information. My question is what about the enfranchised voters of that district who were deprived of the knowledge that the man representing them was under criminal investigation and went to the polls and reelected him whereas had they known this, perhaps they would not have. Did they not have the right to know sooner who was representing them and what was his situation?

BHARARA: That is a great and legitimate question. And I will answer it this way. We make decisions all the time about when to be overt in an investigation and when to remain covert because we have sometimes competing principles and interests. And one, I'll analogize to the financial area for a moment and come back to the particular question you asked.

We, all the time, get information about someone engaging in bad conduct. Sometimes it's the case that you can't prove it beyond a reasonable doubt and you let it go on and monitor it and ensure that people are not unduly harmed in the broader interest of trying to make sure you can gather and develop enough evidence so that when it becomes public, that person doesn't flee, that person doesn't destroy evidence, and that person can be held accountable and be put in prison for as long as is deserved. In addition to that, we're not just talking about that person. Sometimes it comes to light that someone is engaged in bad conduct but he or she is not the only one and he or she is at the bottom of the totem pole and that sometimes there are other guys. And that's true in some violence cases and organized crime cases and cases are not just about money and graph, the cases are about people's lives and if you don't do it properly, people will die. And sometimes, with great care and sensitivity, you have to make judgment calls about how long you'll let something go on. Whether it's a gun running operation or it's a crew of the Bonnano Crime family because the goal is to hold responsible and incapacitate as many people as possible who were responsible for breaking the law and terrorizing people or breaking faith with the public. So we're always struggling with that.

The case you described was, I think, a particularly difficult struggle because at the time, if I recall it correctly, the election was coming up. We did not have all the evidence with respect to other people who engaged in bad conduct. So it's a legitimate question, whether or not we should have thrown our hands up and called it a day and exposed that person and then gone home as

opposed to letting it run a little longer so a number of additional people, including another public official could be charged and held accountable. At the end of the day, and again I really appreciate that because we thought long and hard about it. For people who disagreed with the decision, you should understand that we didn't do it in a cavalier or a casual way and we thought about it a lot because enfranchisement is important. I can give you another example of that in a moment about the timing of how we act. Ultimately, both that individual and other individuals were taken out of office and at the end of the day, I think: a greater public service was done in terms of accountability and having people be true representatives of the public, than if we had called it quits earlier. Another reason for when we do end earlier than we might is because we think bad things are happening. And people can be disenfranchised if there's an election, but they can also be disenfranchised if we wait too long to charge someone when they're bills under consideration as is happening now. So, the job is a good one but there are judgment calls like that we have to make all the time

AUDIENCE MEMBER: Hi, good morning, sir. In the topic of public corruption, twenty years ago, Chief Judge Sol Wachtler was prosecuted for alleged crimes he eventually pleaded guilty to by the US Attorney for the District of New Jersey that was then Michael Chernoff, not the US Attorney for the Southern District because it was an apparent conflict of interest for the Chief Judge of New York to be investigated and prosecuted by the Southern District US Attorney. Flash forward to today, in the Bridgegate investigation, Governor Christie is being investigated, there's an investigation taking place by Mr. Fishman, the US Attorney for the District of New Jersey. Some would say the investigation is languishing. My question is: Do you believe there is at least an appearance of impropriety for the immediate successor of Christie to be investigating him when his office is surely filled with many AUSAs and investigators and is there anything you or your office could do to take over that investigation.

(laughs)

BHARARA: If you want to write a letter to someone and suggest something that's your right as a citizen... I don't know about that case, I don't know what the considerations are. I get asked about other people's investigations from time to time. I don't comment on them, in the same way I wouldn't like it if other people commented on the investigations being done out of my office. I come from New Jersey, it's a great state. Paul Fishman is a great US Attorneys and im sure that he'll do the right thing in the right time.

SANDLER: Thank you. (applause) This has been a remarkable morning and I thank you all for coming and US Attorneys Preet Bharara for an extraordinary morning. I want to just acknowledge Mayor Dinkins whose here in the audience and has been here the whole times. Mayor Dinkins, 87 years old and still going strong. As we always do, we want to give a product of the scholarship of this law school to the speakers. This is the 118th breakfast. For this

breakfast, I asked my friend and former colleague at the US Attorney's Office, Frank Turkheimer, whose a visiting professor at New York Law School. His book, *Forgotten Trials of the Holocaust*, a great and very valuable read about Holocaust trials and the correctness and importance of them. Not the most famous Nuremberg ones, but the others, and I give it to you with appreciation and thanks for a wonderful morning and a stimulating day.